

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BIOTECHNOLOGY VALUE FUND, L.P.,
BIOTECHNOLOGY VALUE FUND II,
L.P., INVESTMENT 10, L.L.C., BVF
INVESTMENTS, L.L.C.; BVF INC., and
BVF X, LLC,

No. C 13-03248 WHA

Plaintiffs,

v.

**ORDER RE ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
(DKT. NO. 230)**

CELERA CORPORATION, CREDIT
SUISSE SECURITIES (USA) LLC,
KATHY ORDOÑEZ, RICHARD H.
AYERS, WILLIAM G. GREEN, PETER
BARTON HUTT, GAIL M. NAUGHTON,
WAYNE I. ROE, and BENNETT M.
SHAPIRO,

Defendants.

Defendants move to seal the entirety of Exhibit F to the Declaration of Brandon Wisoff in support of their motion to exclude the opinions of plaintiff's damages expert Adam Werner. Exhibit F is the expert report of Carl Saba. This includes documents that non-party Merck had marked confidential. Defendants filed this administrative motion pursuant to paragraph 12.3 of the amended stipulated protective order (Dkt. No. 166).

Merck asserts that paragraphs 21–22 of the Saba Report should be filed under seal because they contain highly confidential and proprietary business information whose public disclosure would be adverse to Merck. Merck does not state how or why disclosure of this information would be adverse to Merck (Dkt. No. 237).

Merck's declaration does not address the "compelling reasons" standard that applies to documents filed under seal. Under *Kamakana v. City & County of Honolulu*, 447 F.3d 1172,


1 1178–79 (9th Cir. 2006), the court held that a “strong presumption of access to judicial records
2 applies fully to dispositive pleadings” and “‘compelling reasons’ must be shown to seal judicial
3 records attached to a dispositive motion.” Moreover, the burden of meeting the “compelling
4 reasons” standard falls squarely on the shoulders of the “party seeking to seal a judicial record.”
5 *Id.* at 1179.

6 Since Merck’s declaration did not address the “compelling reasons” standard set forth in
7 *Kamakana*, it has not met its burden of showing why the proffered documents must be sealed.
8 As such, the motion is **DENIED**.

9 This denial is without prejudice to Merck filing, by **NOON ON MONDAY, DECEMBER 29,**
10 **2014**, a renewed declaration that squarely addresses the “compelling reasons” standard set forth
11 by the Ninth Circuit in *Kamakana*.

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13 **IT IS SO ORDERED.**

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15 Dated: December 23, 2014.

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18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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